IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.924 OF 2005

Manohar Hiraji Patil .. .. ..Appellant
Versus
Bhaurao Narayan Patil and Ors. .. ..Respondents

Mr.Ameya Tamhane h/f Ms.Seema Sarnaik for appellant
Mr.P.S.Dani for respondent Nos.1 and 2

CORAM : P.V.KAKADE, J.

DATE : 14TH SEPTEMBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Raigad dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Alibag decreeing the plaintiffs' suit for declaration and possession of the suit property from the defendant.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs filed the suit for declaration of ownership and possession of suit premises against the defendant. The plaintiffs' suit is based upon plea of ownership title on the basis of registered sale deed

from one Modi on 3.11.1992. The defendant was occupying the part of the property as tenant of Modi i.e. predecessor in title of the plaintiffs. The plaintiffs issued notice dated 5.12.1994 through their advocate calling upon the defendant to vacate the premises and hand over possession thereof to the plaintiffs. However, the defendant refused to hand over possession on various grounds and hence the suit came to be filed. The defendant contested the suit on the ground that he was owner of the suit property as Modi family had bequeathed the property to the grand father of the defendant about 50 years ago. Alternatively it was prayed that the ownership title was of the defendant was protected by virtue of adverse possession and therefore sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that they were owner of the suit property and the defendant was a tenant since his predecessor in title at the rent of Rs.30/= p.m. in the premises. It was further held that the defendant neither proved that he was owner of the suit property nor proved that he had become owner by adverse possession and decreed the suit.

The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial judge and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The plea of the defendant to the effect that he has become owner by virtue of bequeath made by Modi's family about 50 years ago to his grand father is found not acceptable for want of any evidence in support of his case. Similar is the position, with regard to the plea of title by adverse possession, as there is no evidence to show that the possession was adequate in continuity, in publicity and in extent so as to show that the defendant had become owner by adverse possession. It must be noted that both the issues are issues of facts and therefore, both the courts below are seen to have properly appreciated the entire evidence on record while coming to the concurrent conclusion. In the circumstances the appeal has no merits and stands dismissed with no order as to costs.

. Consequently Civil Application No.171 of 2005 also stands dismissed with no order as to costs.